DOCUMENT RESUME

ED 077 402 HE 004 208

AUTHOR	Smith, Robert E.
TITLE	[Remarks on Non-Discriminating Hiring Practices in Higher Education.]
INSTITUTION	Office for Civil Rights (DHEW), Washington, D.C.
PUB DATE	7 Mar 72
NOTE	18p.; Speech made at the American Association for Higher Education Annual Conference on Higher Education, Chicago, March 7, 1972
EDRS PRICE	MF-$0.65 HC-$3.29
DESCRIPTORS	*College Faculty; *Equal Opportunities (Jobs); Federal Laws; Federal Legislation; Feminism; *Higher Education; Negro Teachers; Professors; *Racial Discrimination; *Sex Discrimination; Women Professors

ABSTRACT

Discrimination against women and minorities in higher education is by no means a new phenomenon. However, Executive Order 11246 only recently demanded that colleges and universities take positive steps to insure that nondiscriminatory practices are currently being instituted with regard to faculty and staff hiring and promotion policies. Some steps that universities in various parts of the nation have already taken are: (1) advertising new positions in professional journals in ways that reach minorities and women; (2) providing training for current employees; (3) assuring representation of women and minorities on search committees; (4) establishing adequate employee grievance mechanisms; (5) making provision for adequate day care for employees' children; (6) initiating sensible and fair policies for maternity, child rearing and other types of leaves; (7) equalizing retirement plans and other fringe benefits so that one group is not indirectly discriminated against; (8) liberalizing policies on part-time employment, including part-time tenure appointments; and (9) requiring that proposals of a candidate who is not a member of a protected class be accompanied by a statement that women and minority candidates were sought actively. (HS)

ED 077402

REMARKS BY ROBERT E. SMITH

ASSISTANT DIRECTOR, OFFICE FOR CIVIL RIGHTS

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Annual National Conference on Higher Education

American Association for Higher Education

Chicago Illinois

March 7, 1972

HE 001 298

U.S. DEPARTMENT OF HEALTH, EDUCATION & WELFARE
NATIONAL INSTITUTE OF EDUCATION
THIS DOCUMENT HAS BEEN REPRODUCED EXACTLY AS RECEIVED FROM THE PERSON OR ORGANIZATION ORIGINATING IT. POINTS OF VIEW OR OPINIONS STATED DO NOT NECESSARILY REPRESENT OFFICIAL NATIONAL INSTITUTE OF EDUCATION POSITION OR POLICY

FILMED FROM BEST AVAILABLE COPY

We have seen in the past several months a continuing debate on campuses about the equal opportunity requirements of universities and colleges holding Federal contracts.

In face, the debate is one that much of the nation passed long ago. In my mind the question is no longer whether institutions ought to make special efforts to involve those who have been traditionally excluded. The question is what are the things a university can do to lead the way, in equal employment opportunity, for the rest of the community.

The place to start, of course is with an understanding of just what is and is not prohibited by Executive Order 11246. Effective October 1968, the order was amended to prohibit discrimination on grounds of sex, as well as on grounds of race, color, national origin and religion.

Executive Order 11246 applies to Federal contractors. With certain exceptions, all government contracts include the following language:

"During the performance of this contract the contractor agrees as follows:

"The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment

recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship."

Just as many Northerners view school desegregation requirements as something that apply only to Birmingham, Alabama, or Jackson, Mississippi, but not to Boston or Detroit; so also, I'm afraid, many educators view these employment requirements as something that apply to Lockheed and Boeing, but certainly not to their own universities or to their chemistry departments.

Each private institution with government contracts is required to produce an affirmative action plan to comply with the executive order. A public institution is required to produce a similar plan that will overcome

the deficiencies identified by the government and the institution.

These plans generally include a commitment by the chief officer of the university,

a methodology for collecting employment data by race, sex, rate of pay and the like;

a recognition of problem areas;

Goal and Timetables,

a system for checking on progress;

A structure for assuring equal employment opportunity

and a procedure for public and internal dissemination of the plan's contents.

The U.S. Court of Appeals for the Third Circuit Philadelphia has upheld the concept of affirmative action, with these words,

"Clearly the Philadelphia Plan is color-conscious. Indeed the only meaning which can be attributed to the "Affirmative Action" language which since March of 1961 has been included in successive Executive Orders is that government contractors must be color-conscious. Since 1941 the Executive Order program has recognized that discriminatory practices exclude available minority manpower from the labor pool. In other contexts color-consciousness has been deemed to be an appropriate remedial posture."* The Department of Labor is responsible for enforcement of the executive order. It delegates that enforcement responsibility to the individual Federal agencies.

*Contractors Association of Eastern Pennsylvania v. Secretary of Labor 442 F. 2d 159 (Ct of Appeals 3rd Cir. 1971) at 173

The Department of Health, Education and Welfare is responsible for colleges and universities as well as other Federal contractors in the education, welfare, or health fields.

Some of you may ask why women's groups have concentrated all of their fire on this one little Executive Order. In fact, there is no other legal tool for academic women who feel that they have been the victims of sex discrimination.

The historical discrimination against black Americans in our society has been well documented, and only a few persons are bold enough to suppose that the university community has been exempt from the scars of bigotry. What is shocking to realize is that the record

with regard to equal opportunity for women on campuses is poorer now than it was in past years!

One midwestern university has a lower percentage of women on its faculty now than it had in 1899. A West Coast university reports fewer women on the faculty now than in 1930. The percentage of mathematicians who are women dropped from 38 percent in 1950 to 26 percent in 1960; there were similar decreases in the physics and chemistry fields. In 1928, 55 percent of all elementary school principals were women; today about 22 percent of them are women. In 1956 the median income for women was 64 percent what it was for men; ten years later the median income for women had dropped to 58 percent of the male rate.*

*Source of this paragraph: Speech by Rep. Edith Green, Nation Council of Administrative Women in Education, February 21, 1971.

One byproduct of the Executive Order will be, I hope, a realization on campus that universities and colleges are not only special places of learning but also employers having the same employment responsibility as General Motors, the corner grocery, or a construction contractor under the Philadelphia Plan.

The special atmosphere of higher education communities has apparently too long obscured an important fact: These communities, like others, are made up of human beings who have bills to pay, troubles with their supervisors, genuine fears about not getting a raise, and health concerns about climbing the ladder of success.

Just a few years ago university people began paying lip service to the idea of diversity in their student bodies.

Why is not diversity on the faculty and staff also regarded as a worthy goal? If we have learned anything from efforts to increase the presence of minorities and women on campus, it is that their experience and unique perspectives enrich the university community. And so hiring more minorities and women should not be viewed as a favor for those individuals but as a contribution to the university as a whole.

At this point, we should examine the concept of affirmative action, as required by the Executive Order. For what is required of universities and colleges holding Federal contracts is not merely a cessation of discrimination, but also <u>affirmative steps</u> to increase minorities and women in their employee ranks.

The executive order makes two requirements: The first is to overcome whatever discrimination there may have been in the past. This would include the abolition of past policies that blatantly or subtly discriminated against one of the protected classes. Examples would be a retirement plan for which only males were eligible or a recruiting scheme that systematically excluded sources for black scholars or neighborhoods that tended to exclude females, not males.

After those issues are addressed, all ethnic groups and both sexes theoretically then have an equal chance at the starting line.

Then comes the second requirement, to devise affirmative steps--in the words of Department of Labor

regulations--"to increase materially the utilization of minorities and women, at all levels and in all segments of (the)work force where deficiences exist."

A Federal court in Virginia in 1968 gave the rationale for such affirmative action.*

The court said that Congress did not intend to freeze an entire generation of minority group employees into discriminatory patterns that existed before recent civil rights laws were enacted. To do so is not equality.

So, once an employer has remedied the discrimination of the past, he is further obligated to develop an affirmative action program.

Department of Labor regulations say, "An acceptable affirmative action program must include an analysis of areas within which the contractor is deficient

*Quarles v. Philip Morris, Inc. 279 F. Supp 505 (E.D. Va. 1968

in the utilization of minority groups and women, and further, goals and timetables to which the contractor's good faith efforts must be directed to correct the deficiencies."

Goals and timetables are not quotas. They are realistic targets for a department or a part of the university to aim for.

It is here--in the need for affirmative action--that we would hope universities would use the ingenuity and expertise that it readily applies to other issues. Universities have business administration and management expertise; many of them offer courses in equal opportunity; many on their faculties advise private industry on these issues; the same brainpower that has gone into the

search for hidden talent in freshman classes could be utilized in the search for hidden talent on the faculty and staff.

My point is that a university ought to be the last institution to beg the Federal Government for ideas in affirmative action.

Here are some examples of steps universities in various parts of the nation have already taken:

Advertising new positions in professional journals and in ways that reach minorities and women.

Providing training for current employees.

Assuring representation of women and minorities on search committees.

Establishing adequate employee grievance mechanisms.

Making provision for adequate day care for employees' children.

Initiating sensible and fair policies for maternity, child rearing and other types of leaves.

Equalizing retirement plans and other fringe benefits so that one group is not indirectly discriminated against.

Liberalizing policies on part-time employment, including part-time tenure appointments.

Assuring that adequate transportation is available to the university work area.

Asking present female and minority staff members to aid in recruiting and in suggesting applicants.

Requiring that proposals of a candidate who is not a member of a protected class be accompanied by a statement that women and minority candidates were sought actively.

What the concept of affirmative action requires of your institutions is this:

> An active effort to go where the women are, where the minorities are. An attempt to open up your ranks to groups traditionally excluded. A commitment to demand no more of minority group applicants than you demand of non-minorities. Above all, a recognition of problem areas in your employment patterns and a good faith attempt to correct deficiencies.

Too many universities continue to hire by the "old boy" system of word of mouth. They continue to look in the traditional places. They travel across the seas for good people but refuse to go down the street. They

persist with often irrelevant and obsolete standards and requirements that do no more than continue to exclude minorities and women. It is this "business as usual" that the Executive Order is designed to alter.

We have seen much agonizing over the equal employment opportunity requirements imposed on colleges and universities. I am reminded of the statement of a equal opportunity officer for the U.S. Post Office Department. Several years ago the postmaster of a Southern city said he just didn't know how he could possibly comply with the equal opportunities requirements without "discrimination in reverse."

The equal opportunity officer, who is a black man, simply said, "Try Mr. Postmaster, to use as much ingenuity in getting us in as you have used in keeping us out."

For people whose life work has been new ideas, innovation, research and scholarship, that is not an unreasonable task.